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**FEB 01 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Mussmann et al. : DECISION ON PETITION  
Application No. 09/931,162 :  
Filed: August 17, 2001 :  
Attorney Docket No. 33766W039 :

This is a decision on the "REQUEST FOR WITHDRAWAL OF ERRONEOUS ABANDONMENT" filed December 22, 2006.

The petition under 37 CFR § 1.181 is DISMISSED.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f).

The above-identified application became abandoned for failure to timely respond within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed June 29, 2005. This period is not extendable. No reply having been received, the above-identified application became abandoned on September 30, 2005. A courtesy Notice of Abandonment was mailed on December 19, 2005.

In response, applicants filed the instant petition. Applicants assert that the issue fee (and publication fee) was timely filed on April 4, 2005 in response to the Notice of Allowance and Fee(s) Due mailed December 30, 2004. It was further noted that by decision mailed May 16, 2005, a previous erroneous abandonment was withdrawn.

The facts and circumstances of the abandonment have been considered, and it has been determined that withdrawal of the abandonment is not warranted. As stated the application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed June 29, 2005. Applicants do not assert that this Notice was not received. Rather, applicants argue that their failure to respond should be excused because the fees were previously paid in response to the Notice mailed April 1, 2005.

However, the Notice specifically and boldly states that:

THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN  
THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL  
BE REGARDED AS ABANDONED.

Applicants have not established that such action was taken. Accordingly, the application is properly regarded as abandoned.

Applicants are not precluded from submitting a petition to revive pursuant to § 1.137(a) or § 1.137(b).

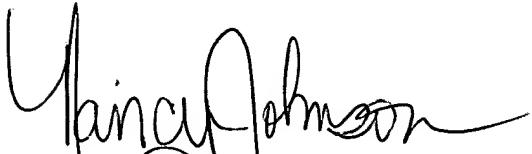
Further correspondence with respect to this decision should be addressed as follows:

By mail:           Mail Stop Petition  
                    Commissioner for Patents  
                    P.O. Box 1450  
                    Alexandria, VA 22313-1450

By fax:           (571) 273-8300  
                    ATTN: Office of Petitions

By hand:           Customer Service Window  
                    Randolph Building  
                    401 Dulany Street  
                    Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Johnson".

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions